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Minutes  
Special Meeting  
Appeal of Decision  
July 23, 2013

**Present:** Mayor Kenneth Neilson, Councilmen Bill Hudson, Thad Seegmiller, Kress Staheli, Ronald Truman, Jeff Turek, City Attorney Jeff Starkey, City Manager Roger Carter, Police Chief Jim Keith, Community Development Director Drew Ellerman, City Recorder Danice Bulloch  
**Audience:** Maria A. Lobato, Katie Madsen, Dorothy Engelman, Cheryl Lynn Sim, Joshua Cooper, Jacob Cooper, Chris Michel, Jason Prisbrey, Mary Jederberg, Warren Jederberg, Kaleo Elia, April Rowley, Brandon Rowley, Tony Garrett, Doug Chambers, Randy McDonald, Doug Northington, Sam Barden, David Barwick, Ronald Olroyd, Diane Metcalf, Eric Heller, Sue Kimball, Don Kimball, Kirk Smith, John Macumber, Marilyn Macumber, Mike Empey, colleen Empey, Kara Needle

**Invocation:** Councilman Truman

**Pledge of Allegiance:** Councilman Hudson

**1. APPROVAL OF THE AGENDA**

*Councilman Hudson made a motion to approve the agenda. Councilman Truman seconded the motion; which passed with the following roll call vote:*

<i>Councilman Hudson</i>	<i>Aye</i>
<i>Councilman Seegmiller</i>	<i>Aye</i>
<i>Councilman Staheli</i>	<i>Aye</i>
<i>Councilman Truman</i>	<i>Aye</i>
<i>Councilman Turek</i>	<i>Aye</i>

**2. APPEAL OF DECISION**

**A. Consideration to affirm, reverse or alter action taken by the Planning Commission for a Conditional Use Permit C-13-10, requesting a Firearms Retail/Indoor Shooting Range located at 400 W. Telegraph Street. Applicant: Dixie GunworX, Chris Michael & Jacob Cooper**

**Community Development Director Drew Ellerman review:**

The applicant is appealing a decision of the Planning Commission to the City Council. The Planning Commission, by a 3-2 vote, denied the applicant's request for a Conditional Use Permit for an indoor shooting range business. The proposed site is located at 400 West Telegraph Street (in the current Airplane Museum building). The applicant is wishing to develop an indoor

shooting range business in conjunction with the current gun repair business at this location. The zoning ordinance does not list a "shooting range" specifically in either the permitted uses or in the conditional use list in this particular C-2 zoned property. The zoning ordinance, as found in section 9-10B-2C titled "Other Uses", does allow for the planning commission to determine, through the conditional use permit process, if an application can be found to be "compatible and in harmony with the intent of this zone".

This is the process in which the applicant sought approval for this use at the July 3, 2013 meeting. Also not found in the zoning ordinance is a stated requirement for off street parking. The applicant is proposing an off street parking requirement of one and a half (1.5) off street parking stalls per one shooting stall found in the shooting range area. This calculation would be added to the current parking stalls required for the existing gun repair business (which requires 5 stalls currently), making the minimum required parking area to include twenty (20) parking stalls.

The large storage area of the existing building would be modified on the inside to build (at this time) ten shooting lanes. The design and construction of the interior would be required to meet the industry standard for bullet absorption and noise minimization. Attached in this report are examples of what the applicant will be using to accomplish this measure.

At the July 3, 2013, staff recommended that the Planning Commission approve C-13-10, allowing for a shooting range business to be established at the location of 400 West Telegraph Street, based on the findings and subject to the conditions found below. The Planning Commission denied the request, by a vote of 3-2, based on concerns that the shooting range would be harmful to the Erin Kimball Foundation residents directly to the west of this property.

#### Findings

1. The proposed use, at the particular location, is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood and community; and
2. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of the persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and
3. The proposed use will comply with the regulations and conditions specified in this title and associating state and federal titles, for such use; and
4. The proposed use will conform to the intent of the general plan.

#### Conditions

1. Any site improvements shall meet the requirements of City and State adopted codes.
2. Before occupancy, the City Fire Marshall, City Public Safety Department and the City Building Department will do inspections to insure that all code requirements and safety issues are addressed and complied with.
3. Trash dumpsters shall be screened from public view.
4. All signs shall be located and approved as per city sign ordinance.
5. Parking for the shooting range area of the business will be required to be 1.5 off street parking stalls per shooting lane. All other off street parking will be as outlined in the zoning ordinance.
6. All outdoor lighting shall be directed inward to the site.
7. All future expansion(s) will be required to follow all the conditions of this use permit.

Mayor Neilson asked City Attorney Starkey to explain the appeal process.

City Attorney Starkey reviewed the Appeal Process and Procedures with the City Council. He explained this would not be a public hearing, but rather an appeal of what actually happened at the

Planning Commission Meeting. He reviewed the CUP Ordinance and also noted Council has reviewed the minutes of the Planning Commission Meeting. Once the appeal process has been completed, the Council takes back what they have learned and then retire to a Closed Session to deliberate, then within 10 days a formal notification of the decision would be made.

Councilman Seegmiller stated he would like some clarification from the appellant. He asked the owners if they still intend to move forward with the appeal.

Jacob Cooper and Chris Michael stated they are the owners of Dixie GunworX, and they do intend to proceed.

Councilman Truman stated Council appreciates the hard work of the Planning Commission. This is the first time the Council has had an appeal of the Planning Commission decision. The information in the minutes is very detailed, and with reviewing the code the Council will make the determination if all of the guidelines by Washington City are followed. The City has a need to have a safe place to go shooting. He is aware of the home on the adjacent parcel being reconstructed for the Erin Kimball Foundation, along with their concerns as to the noise and rapid fire shooting. It has been clearly noted by the applicant, in the Planning Commission Meeting, the sound would be completely mitigated, which would eliminate the concern for traumatization of the battered women and children being housed next door. He is also an advocate of the constitutional privilege for a right to bear arms. Council needs to build a balance for the right to shoot, and have a safe place to do so.

Councilman Seegmiller stated he has thought much about the Erin Kimball Foundation next door, and what their intended use will be. He has had to experience domestic abuse in his own family line. Some victims of domestic abuse are frightened of fire arms, but others find firearms to be safe and are fortunate to have the ability to scare off an attacker. He would like to know if the facility has the ability to screen those who would fear the fire arms.

Councilman Hudson asked for clarification from Staff. Is the appeal before Council tonight for the gun sales and indoor shooting range, or is it for the shooting range only as gun sales is already a permitted use under the currently zoning.

Community Development Director Drew Ellerman explained the property is currently zoned C-2, which currently allows for the sale of firearms as a permitted use. The property has the same zone as Walmart, which allows for gun sales. However, the indoor shooting range portion requires a Conditional Use Permit.

Councilman Turek clarified the biggest concerns noted is not only the sounds of the shooting range, but also the sight of the weapons. He does not see any discussion for possible mitigation of the sight outside of a block wall.

Mr. Ellerman stated the Planning Commission discussed having the returning clients bring their firearms in a gun case.

Councilman Turek asked if there was any discussion of placing trees to help block the view.

Mr. Ellerman stated there was discussion about adding landscaping to limit the views.

Councilman Seegmiller stated he would be concerned if Council were to requiring the applicant to add landscaping to block views as it would be beyond what would be necessary under normal

circumstances. He also noted, this located would allow for exposed firearms regardless of the business.

Mr. Ellerman explained in the State of Utah, anyone could walk down the sidewalk with an exposed firearm.

Councilman Truman stated the firearms would actually need to be exposed without someone carrying a concealed weapons permit. He then expressed appreciation for the attendance to the meeting and the willingness to participate in the public process.

Councilman Seegmiller asked what the process would be to ensure all of the requirements placed on the properties are completed and are safe.

Mr. Ellerman explained they would most likely have the building inspected by one of the Washington City Building Inspectors as well as bringing in a third party, whether it be one of our Police Officers or a State Officer.

Councilman Seegmiller asked if the appeal were granted what would then be the process for the appellant.

Mr. Ellerman reviewed the process explaining they would have to pull a building permit with plans drawn by an engineer. They would also have to pay additional for the special inspections, which would be required for the type of construction being done.

Councilman Truman clarified the appellant would have to provide the engineering as part of their application, and then pay the additional amounts to have an outside source inspect the installation to ensure it meets the necessary criteria.

Mr. Ellerman confirmed he was correct.

Councilman Seegmiller stated he supports the right to bear arms for both safety and defense. However, the burden of safety for this type of facility falls on the business owner. We need to ensure those safety measures are in place should the appeal is granted.

Councilman Hudson stated as he has been going through the minutes, there have been multiple times where the property was referred to as a residential zone. He asked Staff for clarification of these statements.

Mr. Ellerman explained the property is zoned C-2. There are residential areas to the north, such as the Pearl Condominium. However, the downtown area falls within a mixed use designation in the General Plan with a base of commercial and opportunities for residential on the second or third floor.

Councilman Turek asked for clarification from Cheryl Sims. It has been stated in the record that Mr. Kimball would be placing a chain link fence rather than a block wall, so it did not feel like a prison to the residents of the Erin Kimball Foundation. He would like to know, through her captivate experience, her feelings about the prison feel.

Cheryl Sims stated she basically came from a prison. She was abducted in India for 2 years and was padlocked inside. She has PTSD so to think about being enclosed with any type of fencing is very disturbing. Guns were not involved in her abduction. However, she understands how this could be an issue for those who have been involved with weapons.

Councilman Turek commented he felt having the fencing could give someone a feeling of security. However, he has never been involved in these type of situations, so he obviously would not know the full effects.

Councilman Seegmiller stated there was some discussion at the Planning Commission Meeting with regard to the hours of operation. He would like clarification, as it states they would be open til 10:00 P.M.

Councilman Turek reviewed, Monday through Thursday they would be open until 9:00 P.M. Friday and Saturday would be open until 10:00 P.M. He asked if the parking was adequate at the location.

Mr. Ellerman explained the parking is based on square footage or use. Washington City does not have a category for this particular use. Therefore, he had the applicant search what the typical parking would be for their use. They determined 1.5 parking spaces per shooting lane.

Councilman Seegmiller asked if there was any leeway to restrict the type of weapons allowed inside.

Mr. Ellerman stated he was not aware of a way to limit the type of weapon, but he would defer to legal council.

Councilman Seegmiller stated the strength of the weapon could be limited due to the sound and safety proofing.

Councilman Truman stated he would not assume there would be armor piercing bullets allowed inside the facility.

Councilman Seegmiller stated there should be an inspection for whatever firearm will be allowed in the facility.

Mr. Ellerman stated they could ask for a highest caliber weapon allowed by the applicant.

Councilman Seegmiller asked if they have the ability to add conditions on an appeal.

City Attorney Starkey explained the Council has the ability to affirm, reverse or alter any decision made by the Planning Commission, which means nothing would prevent Council from adding conditions.

Councilman Staheli reviewed the process for approving a conditional use permit. Obviously the Planning Commission felt the criteria was not met. He would like to ask for clarification from the Commission on their decision.

Planning Commission Chair Rick Schofield stated he would like to be clear, he owns many guns, as well as holding a concealed weapons permit. He would love to see a facility like this in Washington City somewhere. However, in his opinion, the location would not be adequate. He feels very strongly with the Erin Kimball Foundation, which he donates to their cause. They have a right to be in their location. The Planning Commission's the overriding issue was the Erin Kimball Foundation being at their location, and having the City assist in the CDBG grant.

Councilman Staheli clarified the Planning Commission position was the request would be a detriment to the general welfare of the vicinity.

Councilman Seegmiller clarified with Mr. Schofield when he stated the one business (Erin Kimball Foundation) was in place prior to the other (Dixie GunworX). Did he mean the ownership or utilization of the site.

Mr. Schofield stated he meant the ownership.

Councilman Staheli stated the request is to expand the existing gunwork business who is already a neighbor to the Erin Kimball Foundation.

Councilman Truman commented he understands the position of the Planning Commission, as well as the 3 to 2 vote. However, if the concerns are negated through the sound barrier and safety issues he has a hard time seeing how the request would be injurious to the neighborhood.

Councilman Turek agreed. The only thing to mitigate at this point is sound. The existing business already allows for guns to go into the business. Therefore, it becomes more of a shooting issue only.

Councilman Truman explained with this being an appeal process, he feels it would be inappropriate to take public input, as the public hearing was held at the Planning Commission level.

City Attorney Starkey indicated the next step would be to go into closed session to deliberate. Once a decision is made, the decision would be issued in writing.

Councilman Truman stated he did not feel there should be deliberation privately.

City Attorney Starkey clarified it is not defined in our Ordinance. However, State Law allows for closed session deliberation, but it would certainly be up to Council.

Councilman Seegmiller asked if State Law allows for Closed Session deliberation in the appeal process.

City Attorney Starkey confirmed he was correct. The closed session deliberation would be recorded for any future legal issues.

Councilman Seegmiller asked what would be the next step beyond the appeal process.

City Attorney Starkey reviewed the conditional use permit guidelines with Council, explaining the first step would be the public hearing at the Planning Commission, appeal of the Commission decision would go to the City Council, appeal of the City Council decision would go to the courts.

Councilman Seegmiller noted the conditions are critical to him, and in order for him to vote, he would need to deliberate those conditions.

Jacob Cooper stated he believes as the appellant he was required to send out notice of the appeal. He would like to know what the purpose of the notice was.

Councilman Turek explained noticing allows for the public to be aware of the meeting, and can hear the proceedings by the Council.

Mr. Cooper stated on behalf of Sue Kimball and her people, as well as himself and his people, they were under the assumptions they would have an opportunity to speak. He thinks everyone in the room had a different expectation of what would be taking place.

Councilman Truman explained the protocol for an appeal hearing. At the original hearing, those individuals have an opportunity to present their information in the Public Hearing. However, at an appeal, the Council will deliberate the information which was presented in the original meeting.

Mr. Cooper then thanked Council for their time.

Sue Kimball stated concern as she heard something quoted back from the minutes, and it was incorrect. The correction would be in reference to the Erin Kimball Foundation, they not only have 3 apartment units, they will also be service more than 200 individuals per year for other services. Those residing at this home will be those closest to the abuse. They will be there until they can find another location to live. Also, when they talked about the noise abatement, trauma and posttraumatic stress disorder can be triggered by numerous things.

*Councilman Truman made a motion to leave the Regular Meeting and move into a Closed Session. Councilman Turek seconded the motion; which passed with the following roll call vote:*

<i>Councilman Hudson</i>	<i>Aye</i>
<i>Councilman Seegmiller</i>	<i>Aye</i>
<i>Councilman Staheli</i>	<i>Aye</i>
<i>Councilman Truman</i>	<i>Aye</i>
<i>Councilman Turek</i>	<i>Aye</i>

Council moved into Closed Session at 7:10 P.M.

### **3. ADJOURNMENT**

Council left the Closed Session and returned to adjourn the Regular Meeting at 7:55 P.M.

Meeting adjourned at 7:55 P.M.

Passed and approved this 14th day of August 2013.

Attest by:

  
Danice B. Bulloch, CMC  
City Recorder



Washington City

  
Kenneth F. Neilson, Mayor